

**BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL TO THE BOARD OF APPEALS**

In re Application of: Maniaci, David)	Date:	September 21, 2006
)		
Serial No.: 10/649,691)	Group Art Unit:	3727
)		
Filed: 08/28/2003)	Examiner:	Eugene Lhymn
)		
Title: Cupholding Plate)		
<hr/>			

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450.

Terry Lakos
Name: *TERRY LAKOS*

9-25-06
Date

Hon. Commissioner of Patents and Trademarks
Alexandria, VA 22313-1450

RECEIVED

OCT 03 2006

TECHNOLOGY CENTER R3700

Reply to Examiner's Answer

Dear Sir:

This is a reply to the Answer mailed on August 25, 2006. The Applicant would like to respond in addition to the arguments previously set forward.

U.S. Patent No. 3,955,672 to Brundage is directed to a plate with the capability of holding a cup. The plate is designed to have the cup go through the cup area. The cup, or an enclosure of the cup, is positioned so the hand can grasp it. The cup is grasped so the plate can be balanced on the user's forearm.

U.S. Design Patent No. 242,106 to Caner is directed to a plate. This plate has food compartments that are lower than the plate structure and are connected in a smooth and curved manner.

U.S. Design Patent No. 351,316 to Mann is directed to a plate. This plate is decorative in design and has a shallow area for holding the cup as well as areas for holding food products.

U.S. Patent No. 5,803,305 to Perlis et al. is directed to a plate with a cup holder. There is a general food compartment with a separate compartment for the cup. The cup support area is raised above the rest of the plate structure and the cup support must be enclosed.

However, differences exist between the present invention as described in claims 1-6 and these references. For example in reference to Claim 1:

- Mann does not seem to disclose the specific connection at the center point as disclosed in this claim. The curvature of the pieces seems different than what is disclosed in this invention. There is specific curvature in the cited reference that does not seem to teach the angular requirements of this claim.
- None of the cited references teach a cup holding area where the bottom area is open.

Claim 1 states "said partition elements forming an obtuse angle at said centerpoint at a base of said partition sidewall..." The Examiner directs attention to Fig. 4 of Mann. However, viewing of Fig. 4 shows that the lower left portion does not form an angle at the centerpoint. It terminates past the centerpoint, to the right. Additionally, it does not terminate at the center, but toward the upper-right. Therefore, the element is not taught

by Mann.

The Examiner stated that the Applicant has not claimed the limitation of the cup holding area being open. The Applicant did make this limitation by use of the term "orifice" in the element "a cup retaining orifice..."

In reference to Claim 2:

- Two references are made in the cited reference of plastic. The first specifically states the plastic must be able to be thrown away. The second states that it is made of a higher grade plastic not to be thrown away. This may not encompass all plastics, allowing for claiming of a specific type of plastic.

Essential, it seems unobvious to combine two inventions that are made of two different plastics with clearly different purposes.

In reference to Claims 3 and 4, they were rejected as being unpatentable over Brundage (U.S. 3955672) in view of Caner (U.S. Des. 242106) and in further view of (U.S. 5803305). In Claim 3, the examiner states that Brundage does not teach smooth transition between partition and plate support. This seems to go against the assertion that Brundage teaches "An upwardly curving peripheral rim connection between said plate support surface and said outer flange" in Fig. 3. Also, the examiner does not cite a figure for "A plate support surface having a peripheral edge"

In the Examiners response, Claims 3 and 4 were discussed referencing Claims 2, 4, and 6. Claim 3 was not addressed and the Applicant re-affirms the arguments stated.

In reference to Claim 4, two references are made in the cited reference of plastic. The first specifically states the plastic must be able to be thrown away. The second states

that it is made of a higher grade plastic not to be thrown away. This may not encompass all plastics, allowing for claiming of a specific type of plastic.

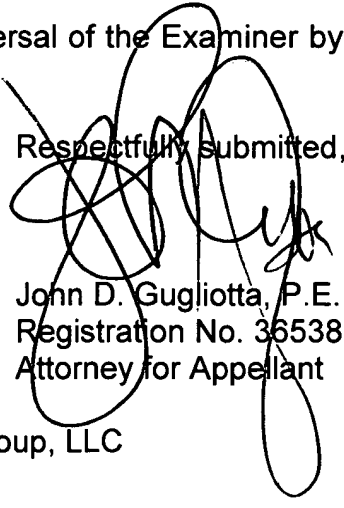
The examiner made a §103(a) rejection on claims 5 and 6 as being unpatentable over Brundage in view of Perlis et al. Regarding Claim 5, the examiner states that Brundage does not teach smooth transition between partition and plate support. This seems to go against the assertion that Brundage teaches "An upwardly curving peripheral rim connection between said plate support surface and said outer flange" in Fig. 3.

In the Examiners response, Claims 5 and 6 were discussed referencing Claims 2, 4, and 6. Claim 5 was not addressed and the Applicant re-affirms the arguments stated.

In reference to Claim 6, two references are made in the cited reference of plastic. The first specifically states the plastic must be able to be thrown away. The second states that it is made of a higher grade plastic not to be thrown away. This may not encompass all plastics, allowing for claiming of a specific type of plastic.

No inference should be taken as to the Applicant agreeing with any statement made by the Examiner. Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

Respectfully submitted,


John D. Gugliotta, P.E., Esq.
Registration No. 36538
Attorney for Appellant

Patent, Copyright & Trademark Law Group, LLC
USPTO Customer No. 33055
430 White Pond Drive
Akron, OH 44320
(330) 253-5678
Facsimile (330) 253-6658